

stops for maintaining the ladder orientation at about 45°. The only way that a stop can be obtained is when the water level gets so low whereby the ladder will hang at a true vertical. This not going to happen in Glenn.

In contrast to Glenn, applicant's claimed ladder in claim 1 and claim 20, The independent claims, the ladder is pivotally movable through the water between raised and lowered conditions. The ladder floats on the upper surface of the water when the water is above a threshold level less than a predetermined external downward force is applied to the lower portion of the ladder. With other words, applicant's ladder must be able to submerge below the water level in order to operate as disclosed. Applicant also claims a stop component attached to said bracket for limiting downward pivoting movement of said ladder. The examiner has not identified any stop component to operate in the manner as claimed. There is none in Glenn. Because of all of the above, a rejection of claim 1 and the claims depending therefrom cannot be maintained as being anticipated by Glenn.

The rejection of claim 20 cannot be upheld because the claim recites that a ladder for mounting pivotably to the platform structure such that said ladder is pivotably movable through the water between raised and lowered conditions, said ladder has a buoyancy such that the ladder is floatable above the water in raised condition when the water is above a threshold level; said ladder being pivotable downwardly into said lowered condition when a predetermined external downward force is applied to a lower portion of the ladder. This structure is simply not present in Glenn and therefore, the ladder of Glenn cannot operate is disclosed and claimed by applicant. Therefore, the rejection of claim 20 cannot be maintained under 35 U.S.C. 102.

Claims 1 - 3, 5 - 7, 1, 12, 15, 17, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Krish, Jr. #5,887,540 in view of Jackson #4,067,412. The examiner now uses a different base reference and states that "Krish

discloses a marine ladder assembly comprised of a support bracket assembly attachable to a platform structure 24, the assembly limiting movement of ladder 12 that extends at a non-vertical angle". The examiner continues to state that "Jackson teaches the utility of buoyancy means 20 that allows the position of a ladder assembly 12, 18 to remain relatively constant with respect to the surface of the water". The examiner then states that "to one of ordinary skill in the art, it would have been obvious to provide the assembly of Krish with the buoyancy to prevent the ladder assembly from sinking to any great extent when a person of normal weight steps thereon".

The examiner is in error by making the proposed combination. The person having ordinary skill in the art would know that this combination would not work because the platform 24 of Krish is buoyant by itself because of the flotation means 20. Therefore, the platform will always remain at a constant level relative to the surface of the water. To make the ladder of Krish buoyant would never change the distance between the water level and the level of the deck. Furthermore, to make the slanting ladder 12 of Krish buoyant as taught by Jackson could not work because the buoyant ladder of Jackson remains in a vertical attitude at all times and this teaching could not be incorporated into the slanting ladder of Krish. It is well known that when a suggested combination of references cannot work that this does not impart obviousness to any claims.

Claims 1 - 8, 11, 12, 15, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritten #4,724,925 in view of Jackson #4,067,412. The examiner introduces a new base reference again. The disclosure of Ritten is directed to a ladder that is rigidly mounted at the rear of a boat and is located at an angle of approximately 45°. The examiner suggests that "Jackson teaches the utility of a buoyancy means 20 that allows the position of a ladder assembly 12, 18 to remain constant with respect to the surface of the water. Why would a person having

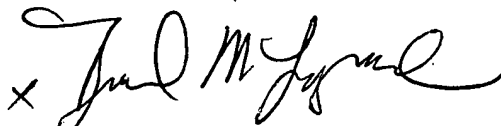
ordinary skill in the art make a ladder buoyant that is attached to a boat which by itself is already buoyant? Furthermore the vertical alignment of the ladder of Jackson cannot be incorporated into a ladder that is at an angle. This simply will not work. Therefore, the rejection of these claims cannot be maintained.

Claims 1 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritten as advanced above in view of Olson #5,152,245. This rejection is not understood. Does the examiner mean as unpatentable over Ritten as modified by Jackson? If so, It should have been as such. It has been advanced above that the proposed combination of Ritten and Jackson cannot be made and cannot be sustained. Therefore, the inclusion of a third reference to further modify the above proposed combination cannot be maintained. Even if the proposed combination could be made, it has long been held by the former CCPA and the now CAFC that a third reference cannot be used to further modify a prior modified combination of two references to reject claims under obviousness. This would be a hindsight reconstruction.

The applicant gratefully acknowledges the allowance of claims 9, 10, 13 and 14 if rewritten. However, the applicant believes to be entitled to the other claims as presently rejected.

In view of all of the above, the examiner is respectfully requested to reconsider the rejection of the claims enumerated above.

The appendix shows a copy of all of the claims as originally filed or amended.

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